

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JASON BERRY,

Plaintiff,

~~-against-~~

C.O. DART et al.,

Defendants.

**STIPULATION AND
ORDER OF
DISCONTINUANCE
PURSUANT TO RULE
41(A)**

Court No. 9:19-CV-1570

(DJS)

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the Plaintiff, Jason Berry (hereinafter "Plaintiff"), and his counsel, Daria Gerasimova, of Ferrara Fiorenza PC, and Defendants, Richard Dart, Steven Pyke, Ryan Pennello, and Daniel Murray ("Defendants"), and their attorney, Matthew J. Gallagher, Assistant Attorney General, Of Counsel, that, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be and the same hereby is settled, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other cases either between the parties to this case or any other parties:

1. Plaintiff discontinues this action with prejudice and without damages, costs, interest or attorneys' fees, and discharges and releases Defendants, Richard Dart, Steven Pyke, Ryan Pennello, and Daniel Murray, the N.Y.S. Department of Corrections and Community Supervision ("DOCCS"), and the State of New York, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of action,

known or unknown, now existing or hereafter arising, whether presently asserted or not, and further agrees to discontinue and/or not to commence or to pursue in any court, arbitration or administrative proceeding, any litigation or claims against said Defendants and/or others released hereby pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents.

2. This action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

3. The parties agree that no provision of this settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

4. This settlement does not constitute a determination of, or admission by, any party to any underlying allegations, facts, or merits of their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This settlement does not form and shall not be claimed as any precedent for, or an agreement by, the parties to any generally applicable policy or procedure in the future.

Following the execution of this stipulation, and it being "so ordered" by the Court, Defendants shall pay to Plaintiff the total sum of one thousand dollars (\$1,000.00) in full settlement of any and all claims, damages, attorneys' fees, and costs. This settlement shall be made in one payment of one thousand dollars (\$1,000.00) via check payable to Jason Berry and mailed directly to Plaintiff at [REDACTED]

5. Payment by Defendants, Richard Dart, Steven Pyke, Ryan Pennello, and Daniel Murray in the amount specified in paragraph 5 is conditioned on the approval of all appropriate state officials in accordance with the provisions for indemnification under section 17 of the New York Public Officers Law. Plaintiff agrees to timely execute and deliver all necessary and appropriate vouchers and other documentation requested with respect to obtaining such approval effectuating payment. Such documentation will be mailed to Plaintiff by agents of the Defendants responsible for the administrative processing of paperwork.

6. As is required by New York State law, payment to Plaintiff by Defendants, pursuant to paragraph 5, could be subject to the provisions of Chapter 62 of the Laws of 2001 (the "Son of Sam Law").

7. This stipulation shall be null and void if the approvals referred to in paragraph 6 are not obtained, and this action shall then be placed back on the trial calendar without prejudice. Payment of the amount referenced in paragraph 5 will be made within one hundred and twenty (120) days after the approval of this stipulation by the Court and receipt by counsel for Defendants of a copy of the so-ordered stipulation, and receipt by Defendants' counsel of all necessary documents referenced in paragraph 6 of this Stipulation, unless the provisions of Chapter 62 of the Laws of 2001 apply to the plaintiff and the payment hereunder constitutes "funds of a convicted person" under the Son of Sam Law, in which event, the one hundred and twenty (120) day payment period shall be extended by an additional thirty (30) days to allow for compliance with that law.

8. In the event that the terms of paragraph 6 are satisfied, but payment is not made within the 120-day period set forth in paragraph 8, interest shall begin to accrue on the

outstanding principal balance at the federal statutory rate on the one hundred and twenty-first day after the Court's approval.


9. Plaintiff represents and warrants that he is not a Medicare recipient, that he has never been on Medicare or Social Security Disability, that no conditional payments have been made by Medicare, and that he does not expect to be a Medicare recipient within the next 30 months.

10. The foregoing constitutes the entire agreement of the parties.

Dated: 2/23/23, Pennsylvania
February 23, 2023


JASON BERRY


Dated: Johnson City, New York
February 27, 2023


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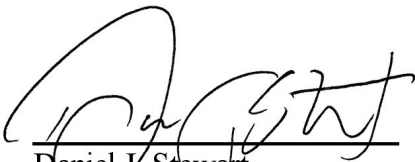
Dated: Albany, New York
February 27, 2023
MARCH 1, 2023

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
The Capitol

Albany, New York 12224

By: 
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IT IS SO ORDERED:



Daniel J. Stewart
U.S. Magistrate Judge

Dated: March 1, 2023
Albany, NY